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## **Righting Wrongs -- Judges to Decide If State Law**

### **Should Apply to Holocaust Heirs**

**A Los Angeles judge will decide whether California law should apply to claims made in four bad-faith lawsuits brought by the heirs of Holocaust victims against a European insurance company that they claim failed to pay on life insurance policies purchased before World War II in Prague, in what is now the Czech Republic.**

Judge James Otero said at the conclusion of a hearing Monday he will take his decision on a demurrer under submission. Assicurazioni Generali argued that Czech law should apply to the claims, and thus, the lawsuits should be dismissed.

The plaintiffs' attorneys, however, argue that the decision was already made last year when Judge Florence-Marie Cooper, now a federal judge, ruled California has jurisdiction over such cases. Her decision was upheld by the 2nd District Court of Appeal, and the state Supreme Court denied review.

Generali maintains the issues of which law to apply - California or Czech - are different, and Otero seems to agree.

William S. Shernoff of Shernoff, Bidart, Darras & Dillon, one of the plaintiffs' attorneys, told Otero it was like Generali was attempting to "take a second bite at the apple," with its argument that there is a "constitutional bar against applying California law to the claims having no significant nexus with this state," as stated in Generali's brief.

The four lawsuits, and a fifth one that settled, were filed in 1998 against Generali. The lawsuits seek hundreds of millions of dollars in unpaid life insurance claims that the heirs of the Holocaust victims say they have been trying to collect for nearly half a century.

Generali has maintained that the Communist government commandeered its Eastern European office after World War II and thus assumed all of its liabilities.

The four lawsuits are based on the Holocaust Victims Insurance Act that was signed by Gov. Pete Wilson in 1998. The act allows such bad-faith claims in California if the plaintiffs can prove the defendant conducts business or litigation in the state. It also extends the statute of limitations on the cases until 2010.

Despite Shernoff's arguments that Cooper already ruled on the constitutionality of the act, along with California's jurisdiction over the case, Otero attempted to distinguish between that issue and the one before him now, explaining his decision will be based on Supreme Court case law and the Constitution's guidelines on whether the court is precluded from applying California law on a Czech matter.

"It's clear in my mind that Judge Cooper did not" rule on this issue, Otero said.

"I know that this is a case significant to so many people," Otero continued. "I believe that this court, as a matter of my oath, [should] address the constitutional matters raised here. This case is probably the most significant case that has ever been given to me for a resolution."

Otero agreed with attorneys on both sides that a pivotal aspect of his decision is case law that permits a state to apply its law when it has "a significant contact, or aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary or fundamentally unfair." *Phillips Petroleum Co. v. Shutts*, 472, U.S. 797 (1985) citing *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981).

Generali, represented by Frank Rothman of Skadden, Arps, Slate, Meagher & Flom, argued in court briefs that the plaintiffs failed to present any authority for resolving under California law a dispute about a contract entered into 60 years ago in Czechoslovakia between Czech parties.

"Instead, they largely repeat that California's interest' in its Holocaust victim population, combined with Generali's having conducted unrelated business in that state, justifies applying California law to plaintiffs' claims," Generali's motion for a demurrer states.

"As Generali has shown, however, common sense and the controlling authorities preclude applying California law because ... California's general interest in advancing the welfare of certain state residents - even those as sympathetic as Holocaust victims - does not amount to a constitutionally relevant contact' under the due process clause," the motion adds.

In their papers opposing the demurrer, the plaintiffs contend California law should apply because all plaintiffs are residents of the state, and Generali conducts business in it.

"While Generali's misconduct began during the War, it continues even now and was designed to avoid a class of obligations that extend to a large population of California citizens," the plaintiffs' papers state. "Generali's conduct therefore has had - and continues to have - direct and predictable effects within California."

Otero said he would not issue his ruling before three weeks, but indicated he would put off making his decision to give parties time to continue mediation, which he ordered.

In addition, Otero indicated it would be appropriate for the president of Generali to come to California from Trieste, Italy, where the company is headquartered, and personally participate in the negotiation. He said he would leave it to the mediator, retired California Supreme Court Justice Edward A. Panelli, to decide who from Generali should attend the mediation.

Rothman said in court he did not want to continue mediation until Otero ruled on the demurrer. Outside court, he said there was "no question about it" that Otero was leaning in Generali's favor. Rothman added that he did not have any "great optimism" that mediation would be successful.

Also outside court, Shernoff said it was "hard for me to read" what Otero might decide.

"I still believe the judge is going to come to the right decision," Shernoff said, adding that it was a "real happening" that Otero requested Generali's president to personally attend the mediation.

The cases are *Babos v. Generali*, BC188680; *Sladek v. Generali*, BC188679, *Friedman v. Generali*, BC193182, and *Feldman v. Generali*, BC214191. Plaintiff Adolf Stern and his family, the first to file a claim against the company, settled their suit in November.